

## **EXHIBIT D**



**NEW YORK STATE  
Unified Court System**

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OFFICE OF COURT ADMINISTRATION

BARRY R. CLARKE, ESQ.  
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ADMINISTRATOR FOR MANAGEMENT SUPPORT

DANIEL M. WEITZ, ESQ.  
DIRECTOR, DIVISION OF PROFESSIONAL AND COURT SERVICES

August 7, 2018

Marc H. Fishman  
3200 Netherland Avenue Unit G  
Bronx, New York 10463

Dear Mr. Fishman:

By e-mail dated July 2, 2018 you have requested reconsideration of the Denial of Accommodation issued on June 22, 2018 by the District Executive, Ninth Judicial district.

Your July 2nd submission indicates that you are requesting accommodations for limitations relating to TBI (traumatic brain injury), sleep apnea, TMJ, occipital neuralgia, and tinnitus. You assert that your memory is impaired and that you are unable to fully remember what has been said during court proceedings.

The medical documentation you submitted in support is a one-paragraph doctor's memo from the Center for Cognition and Communication, dated July 2, 2018, indicating that you sustained a head injury in 2013 and post-concussion syndrome, have been receiving cognitive rehabilitation treatment, and in 2017 underwent a neuropsychological evaluation demonstrating "cognitive deficits" in various areas relating, *inter alia*, to memory.

The Denial Form under review lists the requested accommodation as the use of a CART reporting system (computer aided realtime transcription) in court proceedings. The request was denied on the basis that "the person is not disabled" and "an alternative accommodation that would allow full participation in the proceeding is available," and an explanatory letter dated June 22, 2018 was attached.

The denial of the request for CART is affirmed. As stated in the June 22 explanatory letter, CART reporting is used as an accommodation for those with hearing impairments. You have not provided medical evidence that you are unable to hear what is being said in court. Although you mention tinnitus, you have not provided any medical documentation that it has caused hearing loss.

The explanatory letter advised that the provision of assistive listening devices or Realtime/CART could be considered if you provided medical documentation that you are hearing-impaired and that your ability to participate in court proceedings is thereby impacted, but you have failed to do so.

To the extent this request is based on your assertion of a memory impairment, the submitted documentation does not compel the granting of your request. Although the doctor's note states that you "would benefit from a CART system ... as an aid due to cognitive difficulties," it does not state that those "difficulties" are so substantial in comparison to the general population that they constitute a disability, nor does it explain how those cognitive deficits impact your ability to participate in court proceedings or specify how the proposed accommodation would address those impacts.

As set forth in the explanatory letter, alternative accommodations have been or could be made available to address a memory impairment of the type you describe. As the denial letter explained, transcripts of the official record can be obtained through the usual process. The letter further explains that, insofar as your asserted difficulty remembering instructions given to you by the court is concerned, several alternative accommodations that you requested have already been allowed by the court, including the presence of an ADA advocate and a non-witness notetaker. In addition, you are represented by an attorney in the proceeding, and you also have the ability to ask the judge to momentarily pause the proceeding to enable you to make a written notation of any instruction or statement you deem important. This panoply of alternative accommodations appears sufficient to address any impact your asserted memory impairment may have on your ability to participate in the programs, services, and activities of the court.

Sincerely,



Daniel M. Weitz, Esq.

cc: John Sullivan, Counsel's Office  
Nancy Barry, Esq., District Executive, Ninth J.D.

File/DW/mt

  
**CENTER FOR COGNITION AND COMMUNICATION**  
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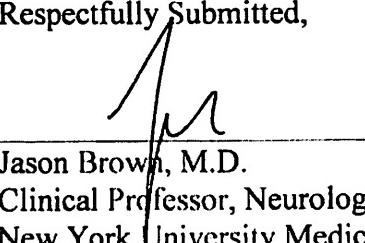
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**Patient's Name:** Marc Fishman  
**Date of Birth:** 8/21/72  
**Date of Injury:** 11/20/13

To Whom It May Concern:

Mr. Fishman sustained a Head Injury and Post-Concussion Syndrome and has been receiving cognitive rehabilitation treatment at our center. In April 2017, Mr. Fishman underwent a neuropsychological evaluation and demonstrated cognitive deficits in areas of verbal learning and memory trials, initial acquisition of non-verbal learning and memory, working memory, and verbal functioning (confrontation naming). Thus, he would benefit from a CART system (Computer Aided Real Time Transcription/Captioning System) as an aid due to his cognitive difficulties.

Respectfully Submitted,

  
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Jason Brown, M.D.  
Clinical Professor, Neurology (ret.)  
New York University Medical Center